

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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| In re Kitec Plumbing Systems Products | § | Case No. 09-md-2098-C |
| Liability Litigation | § | |
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JOINT NOTICE OF END OF CLAIMS PERIOD

Class Plaintiffs and the IPEX Defendants file this Notice to update the Court on this multi-district class action litigation, including that the Claims Filing Deadline has now passed.

BACKGROUND

This case involved claims regarding alleged defects in the IPEX Defendants’ Kitec plumbing system products. This Court granted final approval of the class action settlement on November 17, 2011. *See* Order Certifying Class for Settlement and Approving Class Action Settlement (Nov. 17, 2011) (Dkt. No. 155). Courts in Quebec and Ontario (the “Canadian Courts”) also approved the settlement, covering Canadian class members. *Id.* at ¶ 9; Notice of Final Approval of Class Action Settlement of the Canadian Classes (Excluding Quebec) (Dec. 2, 2011) (Dkt. No. 158); Notice of Final Approval of Class Action Settlement of the Quebec Class (Jan. 4, 2012) (Dkt. No. 159).

The court-approved Settlement Agreement released the IPEX Defendants from liability relating to their Kitec plumbing system products. *See* Class Action Settlement and Release Agreement, Exhibit A to the Declaration of Robert K. Shelquist (Mar. 17, 2011) (Dkt. No. 74-1 at 6-72) (hereinafter, the “Settlement Agreement”), at ¶¶ 89-99. It required them to establish a \$125 million settlement fund, \$25 million of which could be used as Class Counsel’s attorneys’ fees and the remaining \$100 million of which would go toward compensating the class and paying administrative and notice costs. *Id.* at ¶ 59.

The Settlement Agreement became effective when this Court's and the Canadian Courts' final orders and judgments approving the settlement became non-appealable. *Id.* at ¶ 118. Upon the occurrence of these conditions on January 9, 2012, which became the Settlement Agreement's "Effective Date," the IPEX Defendants released to Class Counsel the \$125 million Settlement Fund. Notice of Occurrence of Effective Date and Distribution of Settlement Fund (Jan. 10, 2012) (Dkt. No. 160). This Effective Date also triggered the beginning of the Claims Period—an eight-year period during which settlement class members could make claims for recovery from the Settlement Fund. Settlement Agreement at ¶ 9. "If at the end of the Claims Period, funds remain in the Settlement Fund after completion of the Claims Process and Plan of Allocation and Distribution, all such remaining funds together with interest thereon shall be paid within 60 days by the Claims Administrator to the IPEX Funding Entities . . ." *Id.* at ¶ 110.

STATUS UPDATE

The Effective Date of the Settlement Agreement occurred on January 9, 2012, which therefore began the eight-year Claims Period. The Claims Administrator has reported to Class Counsel periodically as claims have been received and it appears more than 20,000 claims have been received, including a large influx of claims filed in December 2019 and early January 2020. The Claims Administrator estimates that its review of claims will be complete by fall 2020.

The Order Certifying Class for Settlement and Approving Class Action Settlement (Nov. 17, 2011) states that the Settlement Fund was intended to "afford claimants significant financial compensation that will cover all or a substantial portion of the costs associated with either repair of a leak or replacement of the Kitec System during the next eight years that the Settlement Funds will exist." Dkt. No. 155 at ¶ 20. As the Court observed: "initial, partial payments contemplated in the original Plan of Distribution and Allocation, would not begin to take place before the third or fourth year of the claims period" and therefore "Claimants may be required to wait eight years

to receive the full value of [their] qualifying claim.” *Id.* at ¶ 34. The Court-approved Plan of Allocation provides that “A final payment will be made to all qualified Class Members at the end of the eight-year Claims Period such that all qualified Class Members will receive an additional payment in proportion to the value of their claim, in relation to the total value of all claims made during the claims period. The total value of their claim will be the cost of a complete replumb and any unreimbursed consequential damages resulting from the failure of the Kitec system the claimant may have experienced.” Dkt. 74-1 at 102.

The Parties are working together diligently to wind-up the Settlement Fund, including by making to class members all final payments required under the Settlement Agreement and returning to the IPEX Defendants any monies remaining in the Settlement Fund. To this end, in fall 2020, Class Counsel expects to put forward to this Court and the Quebec and Ontario Courts the details of how the final payment to class members will be calculated.

Dated: April 9, 2020

By: /s/ Timothy S. Durst

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2020, the forgoing document was filed with the Clerk of Court for the United States District Court for the Northern District of Texas, Dallas Division, using the electronic case filing system of the court. All ECF registered attorneys of record were served a copy of the foregoing by the ECF system. Any attorney of record not registered with the Court's ECF system will be served by electronic mail.

/s/ Timothy S. Durst
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